Double Patenting

Claims 1-25 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 2-8 of US Patent 5,844,099.

Applicants respectfully request reconsideration and withdrawal of this rejection. The claims of the present invention are directed to nucleic acids, while the cited claims of the '099 patent are directed to fusion proteins. The Examiner states that the "fusion proteins claimed in the patent necessarily require possession of the nucleic acids encoding them". Applicants disagree with that statement.

The nucleic acids of the present invention are patentably distinct from the proteins of the '099 patent. Such fusion proteins may be prepared without the nucleic acids by protein synthesis or enzymatic cleavage and ligation reactions. Nucleic acids are not proteins; while a nucleic acid may be utilized to encode a protein, it is a separate and distinguishable invention. In restriction practice, protein and nucleic acids are routinely segregated as distinct inventions. As such, it appears axiomatic that claims to one cannot present an obviousness type double patenting rejection for the other.

Rejection under 35 USC § 103

Claims 1-25 stand rejected under 35 USC § 103 (a) over Stahl et al, US Patent 5,844,099. Applicants respectfully request reconsideration and withdrawal of this rejection.